

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 854 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

VERIBEN @ LILABEN GOPALBHAI PRAJAPATI

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Appearance:

MR DN PATEL, ADDL.PUBLIC PROSECUTOR for appellant.

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CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 16/03/98

ORAL JUDGEMENT (Per Patel, J.)

1.1 The State has preferred this appeal against the order of acquittal passed by learned Additional Sessions Judge, Banaskantha at Palanpur in Sessions Case No. 148/95 on 31.3.1997.

1.2 Learned Additional Public Prosecutor has got with

him all the papers relating to the case and he has gone through the case papers and read the relevant documents before us.

2.1 The respondent accused were charge-sheeted for offences punishable under section 498(A), 304.B and 306 read with section 34 of the Indian Penal Code. Deceased Pramila got married with original accused No.1. All the accused were residing at Savalia. As averred by the complainant, at the time of marriage, as per his capacity, he gave ornaments to his daughter, deceased Pramila. Original accused No.3 and 4 were not keeping her well; She was being tortured and hard work was being taken from her. On complaint being made by Pramila to the complainant, he used to convey that everything will be alright, and as per his capacity, he used to pay his daughter.

2.2 Out of the wedlock the deceased Pramila delivered a male child who was at the relevant time thirteen months old. At the time of Diwali, accused No.1 came with the deceased Pramila to the house of complainant and stated that they have purchased a piece of land, and a request was also made to pay a sum of Rs.10,000/-. However, complainant disclosed his inability to pay. On 13.12.1991 at about 11.00 p.m. information was received by the complainant, father of the deceased Pramila, that Pramila has expired. On receipt of this information, complaint and his relatives rushed to the house of the accused No.1. In the house, she was seen in a burnt condition. On questioning, it was stated that she has committed suicide. In between 7.00 to 7.30 p.m., the incident in question has taken place. Learned Judge has also indicated in the judgment the size of the house and the injury sustained by the deceased.

3. It is clear that at the time of the incident, the deceased was alone in the house. She did prepare food. Learned Judge has also appreciated the evidence and he has come to the conclusion that evidence against the accused cannot be accepted. When Pramila had been to her father's house, she has not conveyed to anyone about the torture being suffered by her. Even she has not conveyed anything regarding demand of ornaments to her uncle. The learned Judge on appreciation of evidence has come to the conclusion that there is nothing on the record to indicate that there was any ill-treatment to deceased Pramila. Even the complainant has admitted that the deceased Pramila sent money for purchase of Saree and that he purchased a Saree but amount was not sent to the deceased Pramila and because of the sad incident, even

that Saree was not returned.

4. Evidence also clearly indicates that the house in which Pramila was found in a burnt condition was chained from inside at the time of the occurrence. Evidence also reveals that one Mr. Bhatt, broke open the door and inside the house, the deceased was lying. Her mother-in-law, at the time of the incident, was out for some work.

5. Learned Additional Public Prosecutor could not point out any circumstance which would suggest that any demand was made or that there was torture soon before the incident. There is nothing to show that anything was demanded either on the day of the incident or within a day or two. Even about the demand of Rs.10,000/-, it is not the case that it was a demand with threats that she will be tortured or that she will be driven out if amount is not paid. The defence is that the husband was not doing any work and he was conveyed in the presence of the deceased for not doing any work and not earning anything. The manner of conveying was such that she may not have liked, and probably on that count she might have committed suicide.

6. Suffice it to say that the prosecution has not proved its case beyond reasonable doubt. It is required to be noted that complaint was filed after a period of twelve days, and that too, in the Court of law. If the incident occurred in the manner in which it is stated or the demand was made, and failure of payments in the outcome namely the incident, the immediate conduct would be to convey information about the incident to the police, but in the facts and circumstances of the case, it is not done. There is no explanation for filing the complaint in the Court of law after a period of twelve days. Why police was not informed about the demand etc.?

7. This is an appeal against the order of acquittal. The Court has carefully gone through the evidence which was suggested to be read by learned Additional Public Prosecutor. In an appeal against the order of acquittal, though there is no limitation upon the power of the High Court to review at large the evidence upon which the acquittal was founded and to reach to a conclusion that the order of acquittal should be reversed, in exercising that power and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1). the view of the trial judge as to the credibility of the witnesses; (2). the presumption of innocence in favour of the

accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3). the right of the accused to the benefit of any doubt, and, (4). the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses (See AIR 1934 PC 227).

8. Having gone through the evidence and heard the learned Additional Public Prosecutor, we are in complete agreement with the findings arrive at by the learned trial Judge. We are, therefore, not discussing the evidence of each witness in detail in view of the observations made by the Honourable Supreme Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417, which reads as under:-

" .... This Court has observed in *Girija Nandini Devi v. Bigendra Nandini Choudry* (1967) 1 SCR 93 : (AIR 1976 SC 1124) that it is not the duty of the appellate Court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice"

In the circumstances, this appeal stands dismissed in limine.

csm./ -----